

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Amended Order implementing standards and       )  
procedures for issuance of a certificate of public   )  
good for communications facilities pursuant to       )  
30 V.S.A. § 248a   )

Order entered: 8/10/2011

**INTRODUCTION**

The procedures governing Public Service Board ("Board") approval of communications facilities are set forth in 30 V.S.A. § 248a. During the 2011 legislative session, the General Assembly enacted into law Act No. 53 (S.78) amending the procedures set forth in 30 V.S.A. § 248a.

The new statutory provisions include, among other things, the addition of new telecommunications project review categories, modifications to the notice and waiver provisions, and changes to the review time for applications.

Section 248a(l) provides that the Public Service Board ("Board"):

may issue rules or orders implementing and interpreting this section. In developing such rules or orders, the board shall seek to simplify the application and review process as appropriate . . .

In order to implement the amended statute, on June 12, 2011, the Board circulated draft standards and procedures (the "Procedures Order") governing the application and issuance of a certificate of public good ("CPG") and requested comments.

The Board received comments and requests for clarification regarding the draft procedures from: the Agency of Natural Resources ("ANR"); New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T"); the Vermont Telecommunications Authority ("VTA"); the Department of Public Service ("Department"); Central Vermont Public Service Corporation ("CVPS"); Cellco Partnership, Nynex Mobile Limited Partnership 1, and Vermont RSA Limited

Partnership, each d/b/a Verizon Wireless ("Verizon Wireless"); and joint comments from B. Green Permitting and Consulting Services, LLC and Northland Right of Way Services, LLC (together the "Consultants"). The comments are addressed below under the applicable sections of the standards and procedures and the revised standards and procedures are attached below the discussion.

## **II. DISCUSSION**

### **Section II - Definitions - De Minimus Modifications**

The statutory definition of de minimus modifications restricts modifications on a facility or support to a maximum of 10 feet above or from the facility or support structure. The definition also requires that the faces of any additional equipment on the facility or support structure, including antennas and ancillary improvements, cannot exceed 75 square feet in the aggregate. AT&T, the VTA, and the Consultants (together the "Commenters") request that the definition of de minimus modification be clarified with regard to projects that utilize an existing building as the support structure.<sup>1</sup> The Commenters argue that the 75-square-foot calculation if applied to ancillary improvements located on, within, or at the base of a building would, in many cases, prohibit projects with truly minimal impacts from being reviewed as de minimus modifications. The Commenters assert that in most instances, the location of operating equipment on, within, or at the base of a building, will cause less interference with existing building uses and will cause minimal impacts. Therefore, the Commenters request that the definition of de minimus modification be clarified to exclude ancillary equipment located on, within, or at the base of existing structures from the 75-square-foot calculation.

We agree with the Commenters that it is appropriate to allow for greater flexibility in the placement of ancillary improvements on, within, or at the base of buildings under the definition of de minimus modifications. Further, because the placement of ancillary improvements will continue to be restricted to an additional 10 feet from or above the building, and subject to restrictions regarding the amount of impervious surface created as part of the project, these

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1. AT&T comments at 3-5; VTA comments at 1-2; Consultants comments at 1-2.

modifications will have a minimal impact. Based on the comments, we conclude that further clarification of this definition is appropriate and consistent with statutory intent, and we have revised the definition accordingly.

### Section III - Advance Notice

This section, in part, requires applicants to file "written notice," at least 45 days in advance of an application, with certain entities. AT&T asserts that some entities have stated a preference for electronic filing of the notice and requests that the Board clarify whether this is consistent with the directive in this section.

We conclude that the notice requirement does not preclude the use electronic filing and will further clarify the Procedures Order to allow that, in cases where a recipient has requested or granted permission, the advance notice may be submitted electronically.

ANR suggests that the advance notice include a site plan depicting the amount of clearing the project will require.<sup>2</sup>

We agree with ANR that applicants should describe the amount of proposed clearing associated with a project in order to better assist the agency in its review and have revised this section accordingly.

### Section IV - Application Filing Requirements

This section requires applicants to notify recipients that in order to request a hearing the recipient "must make a showing the project raises a significant issue" with respect to the applicable criteria. The section also sets forth the information required as part of the application. ANR requests clarification as to whether this requirement would allow the agency to submit comments in letter form.<sup>3</sup> ANR also requests that applicants be required to submit information regarding wetlands, clearing, erosion control, and access road grade. In addition, ANR requests clarification regarding the information required to be submitted with respect to conditionally waived criteria.

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2. ANR comments at 1.

3. *Id.*

We clarify that comments may be in the form of a letter, but that the comments must demonstrate that the project raises a significant issue in order to request a hearing. We also note that this section of the Procedures Order requires applicants to file detailed site plans of the proposed sites, including cross-section views of any access roads, and detailed information regarding wetlands, clearing, erosion control, and road grades as part of the application. Further, should ANR require additional information with regard to a particular application, the agency may request that the applicant provide the additional information. We also clarify that applicants are not required to file information regarding criteria that have been conditionally waived. However, if ANR concludes that an application raises a significant issue under a waived criteria, it may file comments demonstrating why the project raises a significant issue and request that the conditional waiver be withdrawn.

The Department asserts that because applicants are not required to provide adjoining landowners with a copy of an application, the adjoiners should be notified where they can obtain a copy.<sup>4</sup> The Department maintains that applicants should be required to provide a copy of the Procedures Order or information on how to obtain a copy.<sup>5</sup> The Department also suggests additional language describing intervention and filing of comments in these proceedings.<sup>6</sup> The Department also requests that the required elevation drawings include information regarding the final design of the proposed tower and tower foundation if available at the time the application is filed.<sup>7</sup>

We agree with the Department that adjoiners should be notified where they can obtain copies of applications, and have revised this section accordingly. We agree that recipients may benefit from reviewing the Procedures Order and, therefore, we will require applicants to provide a reference to the Procedures Order and its availability on the Board's website in the advance notice of the application. We also agree that some additional clarification of the process for intervention and filing comments would be helpful and have revised this section accordingly. In

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4. Department comments at 1.

5. *Id.*

6. *Id.* at 1-2.

7. *Id.* at 2.

addition, we agree that the final tower and foundation design should be included, if available, as part of the required elevation drawings, and have clarified this section accordingly.

#### Section IV.F.3(b) - Coverage Maps

This subsection requires that applicants identify "any other assumptions" used in calculating a facility's projected coverage area. Verizon Wireless maintains the software to calculate the coverage area contains "numerous technical assumptions" and that listing them would be burdensome with little corresponding benefit. Therefore, Verizon Wireless asserts that applicants should only be required to provide "non-standard assumptions" used in these projections.

We agree that there is little benefit in providing standard technical assumptions. Further, parties interested in this information could request the information from the applicant in the course of a proceeding. Therefore, we have revised this section in accordance with Verizon Wireless's request.

#### Section IV.F.4 - Project Scope and Narrative

This subsection requires applicants to provide a written narrative describing how the proposed project will be interconnected with other facilities proposed or existing. Verizon Wireless states that in some cases it does not know the exact locations of future connecting sites and, therefore, should not be required to provide this information if the location is not known at the time of filing.

Pursuant to § 248a(a), in order for the Board to consider an application for approval of a telecommunications facility, the facility proposed must "be interconnected with other telecommunications facilities proposed or already in existence." Therefore, the Board cannot waive this statutory requirement and applicants must demonstrate that the proposed facility will be interconnected with other facilities. The statute does not require that the applicant provide the exact location of future projects. However, the applicant must demonstrate how the proposed project will be interconnected with those future projects.

### Sections IV.E and V.D - Existing Permits

These sections require applicants to provide copies of any relevant local or state permits that relate to *the subject property* where the facility is proposed to be located. AT&T points out that pursuant to the revised language of § 248a(a) applicants are now required to file only copies of permits that have "been issued *for the facility* under a statute, ordinance, or bylaw pertaining to the environment or land use."<sup>8</sup> (Emphasis added.) AT&T and the VTA request that the Order be revised to be consistent with the statutory requirements.

We agree that the Order should reflect the new statutory language and have revised this section accordingly.

### Section VI - Waiver of Notice Provisions

This section of the Procedures Order requires that an applicant seeking a waiver or modification of the notice requirements file such a request not later than 30 days prior to the date the notice is required pursuant to 30 V.S.A. § 248a(j)(2)(B). CVPS argues that "mandating the filing of a request for a waiver so far in advance of the date of notice diminishes the value of being able to obtain a waiver" and, therefore, requests that this requirement be "eliminated."<sup>9</sup>

It appears that CVPS has misconstrued the 30-day advance waiver requirement as a Board imposed mandate, when it is actually a statutory requirement under § 248a(j)(2)(B). Because this is a statutory requirement, and not a requirement imposed by the Board, the Board has no authority to waive the requirement.

### Section VII - Completed Applications

The Procedures Order states that the Board will review applications for completeness and notify applicants of any deficiencies. Verizon Wireless requests that the Board establish a "separate, searchable database containing just 248a Decisions" and that the Board update the status of each application online in order to better assist applicants.<sup>10</sup> Verizon Wireless contends that while this would require additional Board resources it "would confer the benefit of relieving

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8. AT&T comments at 5-6.

9. CVPS comments at 1 and 3.

10. Verizon Wireless comments at 1.

the Clerk's office of the burden of responding to inquiries by telephone, e-mail and regular mail."<sup>11</sup> The Consultants "understand that the Public Service Board is understaffed and overworked," however, they request that the Board establish "performance guidelines for Public Service Board Staff to achieve" in processing applications, including the issuance of CPGs for de minimus applications within 10 days following the comment period.<sup>12</sup>

The Board appreciates Verizon Wireless's and the Consultants' suggestions and concern for the Board's administrative burden. The Board notes that it currently maintains a database on its website, where all orders, including those issued pursuant to § 248a, are posted. In addition, the Board is currently in the process of acquiring an electronic filing and case management system which will allow for faster application processing and access to all non-confidential filings, including 248a applications, in the future. The Board notes that the vast majority of applications filed under § 248a have been processed well within the statutory deadlines, and the Board will continue to review applications, respond to inquiries from applicants, and process applications in the most expeditious manner possible.

#### Section XI - Issuance of Decisions

Pursuant to statutory provisions and Section IX of the Procedures Order, the Board has a maximum of 90 days in which to render a decision for projects of limited size and scope and up to 180 days to render a decision on larger projects. Verizon Wireless argues that a recent declaratory ruling from the Federal Communications Commission creates time periods in which state authorities "must act upon siting applications filed by wireless carriers or be in violation of that Act."<sup>13</sup> The declaratory ruling establishes a maximum of 90 days for decisions on collocation of wireless facilities and 150 days for decisions on all other facilities. Verizon requests that the Board review the Procedures Order for compliance with these standards.

The time limits established in the declaratory ruling apply to when an applicant may bring suit at the federal level for a state's failure to act on an application in a reasonable time.

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11. *Id.* at 1-2.

12. Consultants comments at 2.

13. Verizon Wireless comments at 2.

Accordingly, should an applicant find that the Board has not acted in accordance with the federal time periods it is free to bring suit at the federal level at that time. Therefore, the Procedures Order does not conflict with the Federal standards. The Board will, however, continue to process applications in the most expeditious manner possible.

#### Amendments to Certificates of Public Good

Applicants seeking approval for a substantial change to a project that has already been issued a CPG, must file an application for approval of the revised project pursuant to the notice and application requirements for that type of project as described in the Procedures Order. AT&T asserts that, in cases where advance notice is required, that this requirement may "significantly and unnecessarily delay the deployment" of facilities.

The Board finds that the notice provisions contained in the Order are necessary to provide adequate notice to those entities that may be impacted by substantial changes to a proposed project. Therefore, we decline to waive these notice provisions for amendments to previously approved projects. In addition, in cases where the amendments will not cause any additional impacts, applicants may request a waiver of the notice requirements pursuant to the waiver provisions in the Order.

#### Successive Applications

ANR requests clarification regarding successive applications by an applicant under the process for de minimus modifications. ANR requests clarification regarding potential cumulative impacts of multiple successive applications filed by an applicant as de minimus modifications.<sup>14</sup>

In cases where an applicant has received a CPG for a de minimus modification and subsequently applies for approval of additional modifications as de minimus modifications, the subsequent application would be treated by the Board as an amendment to the original project and, as such, the entire project would be required to comply with the de minimus standards. Therefore, the total area impacted under the application, including the proposed amendments, would be required to meet the standards applicable to de minimus modifications.

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14. ANR comments at 1.



### **AMENDED STANDARDS AND PROCEDURES**

**I. Purpose and Applicability:** The purpose of these standards and procedures is to implement 30 V.S.A. § 248a ("Section 248a"). These standards and procedures are applicable to the proposed construction or installation of telecommunications facilities that are to be interconnected with other proposed or existing telecommunications facilities. The Board may, upon request of the applicant and for good cause, waive or modify the standards and procedures with respect to a specific project.

**II. Definitions:** "Telecommunications facility" means a communications facility that transmits and receives signals from a network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes, any associated support structure, and any ancillary improvements that are proposed for construction or installation of the facility and are primarily intended to serve the communications facilities or support structure.

"Ancillary improvements" means telecommunications equipment and site improvements primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or telecommunications grid, fencing, equipment shelters, generators, and access roads.

"De minimus modification" means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, or the reconstruction of such facility or support structure, provided:

- (a) the height and width of the facility or support structure, excluding equipment, antennas, or ancillary improvements, are not increased;
- (b) the total amount of impervious surface, including access roads, surrounding the facility or support structure is not increased by more than 300 square feet;
- (c) the addition, modification, or replacement of equipment, antennas, or ancillary improvements does not increase the height or width of the facility or support structure by more than 10 feet;
- (d) the addition, modification, or replacement of equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

For purposes of this definition, where the proposed ancillary improvements will be installed on, within, or at the base of a building, the ancillary improvements may be excluded from the aggregate surface area calculation in subsection (d) provided that: (1) the ancillary improvements comply with the limitations in subsection (c) measured from the outer walls of the building (for width) and the highest existing element of the building (for height); (2) the

aggregate surface area of the antennas and equipment other than ancillary improvements does not exceed 75 square feet; and (3) any other additions, modifications, or replacements associated with the facility otherwise comply with subsections (a) and (b).

"Limited size and scope" means a new telecommunications facility, including ancillary improvements, that does not exceed 140 feet in height; or an addition, modification, replacement, or removal of equipment at an existing telecommunications facility or support structure, and ancillary improvements, that would result in a total facility height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet. In order to qualify as a project of limited size and scope, construction of the project shall not result in earth disturbance of more than 10,000 square feet of earth, excluding temporary earth disturbance associated with construction activities.

"Landowner of record of property adjoining the project site" means a person who owns land in fee simple if that land will be crossed by a new private right-of-way or new utility easement to access and service the facility, shares a property boundary with the property upon which the facility will be located, or would share a boundary with the property upon which the facility will be located but for the presence of an intervening river, stream, public highway, or railroad line which shares a boundary or intersects the property.

### **III. Advance Notice Requirements for Projects Other Than De Minimis Modifications:**

The applicant must provide written notice, at least 45 days in advance of filing a § 248a application, to the following entities:

- (a) legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- (b) the Secretary of the Agency of Natural Resources;
- (c) the Division for Historic Preservation;
- (d) the Commissioner of the Department of Public Service and its Director for Public Advocacy;
- (e) the landowners of record of property adjoining the project sites;
- (f) the Public Service Board (the notice to the Board should be provided in electronic format only);
- (g) the Natural Resources Board (if the application concerns a telecommunications facility previously permitted under 10 V.S.A. chapter 151).

The notice shall state that the applicant intends to make a § 248a application, identify the location of the telecommunications facility site(s) and provide a description of the proposed project(s), including a description of the amount of any clearing proposed for the project(s). In addition, the notice must contain sufficient detail about the proposed project(s) to allow the parties receiving the notice to understand the impact of the project(s) on the interests of those parties. The notice shall also state that recipients may contact the applicant with questions or comments regarding the proposed project. The notice shall state that the application is being filed pursuant to this Order and that the Order is available at the Board's offices and website. If

the applicant has not filed an application for the project, pursuant to the filing requirements below, within 180 days of the date of the advance notice, the notice will be considered withdrawn. Written notice may be filed electronically at the request of or with the permission of the recipient.

If the applicant makes a substantial change to the proposed project, the applicant is required to provide notice of this change to all parties and entities already notified, including any newly affected adjoining property owners. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria applicable to the project.

#### **IV. Application Filing Requirements for Projects Other Than De Minimis Modifications:**

Upon filing an original and two copies of the application with the Board, the applicant must also submit a copy of the application to the legislative bodies, municipal planning commissions and regional planning commissions in the communities where the project is located, the Secretary of the Agency of Natural Resources, the Division for Historic Preservation, and the Natural Resources Board (if the application concerns a telecommunications facility previously permitted under 10 V.S.A. chapter 151). Two copies must be submitted to the Department of Public Service. The applicant shall also provide notice to the landowners of record of property adjoining the project site(s) that the application has been filed with the Board and provide information on where the landowner may obtain a copy of the application. The application and notice provided shall inform recipients that they have 21 days to file comments, motions to intervene, or requests for hearing on the project with the Board. The notice must also state that if a recipient would like to request a hearing, the recipient must make a showing that the project raises a significant issue with respect to the applicable criteria under 30 V.S.A. § 248a(c)(1) and pursuant to this Order.

The applicant shall ensure that the application filed includes testimony or exhibits addressing each of the areas listed below. Any witness sponsoring an exhibit must have personal knowledge of and be able to testify as to the validity of the information contained in the exhibit. The applicant shall file proposed findings of fact and a proposed certificate of public good with its petition.

**A. Applicant's Name.** The application shall include the name, contact information and a description of the company or person making the application.

**B. Host landowners.** The application shall include the names and addresses of the landowners on whose property the proposed facilities would be built.

**C. Adjoining Landowners.** The application shall include the names and addresses of all adjoining property owners. This information shall be obtained from the most recent version of the town's grand list.

**D. Certification that Notice Requirements Have Been Met.** The applicant must certify it has complied with all notice requirements.

**E. Existing Permits.** The applicant must provide copies of any relevant local or state permits (including Act 250 and municipal zoning permits) that relate to the facility and identify conditions in the permits that could impact the proposed development. If the proposed project would be inconsistent with any existing permit conditions, the applicant shall identify those conditions and explain why it is not feasible to harmonize the proposed project with those conditions. The applicant shall certify that it has not obtained or been denied a permit or permit amendment under the provisions of Title 24 or chapter 151 of Title 10 for the same or substantially the same project. An applicant may seek approval under Section 248a for a modification to a previously permitted project.

**F. Project Description**

**1. Site Plans**

The applicant must provide a site plan for each telecommunications facility project. A site plan shall include:

- (a) Proposed telecommunications facility locations and any ancillary improvements.
- (b) Property boundaries and setback distances to the base(s) of the proposed support structure or existing structure and to the nearest corners of each of the related structures to those boundaries, and dimensions of all proposed improvements.
- (c) Proposed utilities, including distance from source of power, sizes of service available and required, and locations of any proposed utility or communication lines.
- (d) A description of any areas where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations of wetlands.
- (e) Detailed plans for any drainage of surface and/or sub-surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
- (f) Locations and specific descriptions of proposed screening, landscaping, ground cover, fencing, exterior lighting and signs.
- (g) Plans of any proposed access driveway, roadway or parking area at the facility site, including grading, drainage and traveled width, including a cross-section of the access drive indicating the width, depth of gravel, and paving or surface materials.
- (h) Certification that the project construction complies, at a minimum, with the requirements of the Low Risk Handbook for Erosion Prevention and Sediment Control issued by the Vermont

Department of Environmental Conservation, regardless of any provisions in the handbook that limit its applicability.

- (i) The latitude and longitude coordinates for each proposed telecommunications facility.

## 2. Elevation Drawings

- (a) For each proposed support structure, the applicant must provide elevation drawings.

- (b) The elevation drawings must be at appropriate scales but no smaller than 1"/20'.

- (c) The applicant must include two elevation drawings of the proposed support structures drawn at right angles to each other, showing the ground profile to at least 100 feet beyond the edge of any proposed clearing, and showing any guy wires or supports. The elevation drawing shall show all proposed antennas, including their location on the tower or other support structure and the height of the tower or other support structure above grade at the base, and describe the proposed finish of the tower or antenna.

- (d) For proposed towers, the elevation drawing shall indicate the relative height of the tower to the tops of surrounding trees as they presently exist.

- (e) For proposed towers, the elevation drawing shall include a description of available space on the structure.

- (f) For proposed towers, the elevation drawing should include a description of the tower and foundation design.

- (g) Each plan sheet shall be clearly labeled with the project title, date, revision date(s), scale, and name of the professional or firm that prepared the plan.

## 3. Coverage maps

The applicant shall provide a signal propagation study that clearly identifies the proposed coverage area of each communications service that will use the proposed telecommunication facilities at the completion of construction or installation of the facilities.

- (a) For proposed telecommunication facilities that will extend the coverage area of an existing communications network, the coverage maps shall show the areas of existing coverage as well as the additional areas of coverage which the proposed facilities will enable.

- (b) Radial plots shall be in bright colors, showing clear demarcations between signal strengths. For each antenna or antenna array, identify the power output of the antenna(s) and any non-standard assumptions used to calculate the projected coverage area.

#### **4. Project Scope and Narrative**

The applicant shall provide a written narrative describing how the proposed facilities will be interconnected with other telecommunications facilities proposed or existing. If the facility relates to the provision of wireless service, the applicant shall demonstrate that the facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

#### **G. Public Good**

The applicant must explain how the proposed project would promote the general good of the state consistent with 30 V.S.A. § 202c(b).

#### **H. Environmental Criteria**

1. The applicant must address each of the criteria set forth in 10 V.S.A. §§ 6086(a)(1) through (8) and (9)(k) and 1424a(d). To the extent that the proposal will create an adverse impact affecting any of these criteria, the applicant should describe what measures, if any, will be taken to minimize such impact.

2. Conditional waiver of criteria for projects of limited size and scope: Pursuant to 30 V.S.A. § 248a(k), for telecommunications facilities of limited size and scope, the Board conditionally waives all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. §§ 6086(a)(1)(D) (floodways) and 6086(a) 8 (aesthetics, historic sites, rare and irreplaceable natural areas, endangered species, necessary wildlife).

#### **I. Local and Regional Plans**

The applicant shall provide copies of the relevant sections of the Town Plans and Regional Plans in effect in the communities in which the proposed facilities will be located and describe how the project meets or complies with the land conservation measures in those plans. If the project does not so comply with a plan, the applicant should explain why not and demonstrate how the applicant has nevertheless given substantial deference to those measures or explain why there is good cause not to give substantial deference to those measures. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

#### **V. Application Filing Requirements for De Minimis Modifications:**

For de minimis modifications, upon filing an original and two copies of the application with the Board, the applicant must also submit a copy of the application to the legislative bodies in the communities where the project is located, and the landowner of record of property on which the facility is located. Two copies of the application must also be submitted to the Department of Public Service.

Applicants shall ensure that the application includes testimony or exhibits addressing each of the areas listed below. Any witness sponsoring an exhibit must have personal knowledge of and be able to testify as to the validity of the information contained in the exhibit. Applicants shall file proposed findings of fact and a proposed certificate of public good with the petition.

**A. Applicant's Name.** The application shall include the name, contact information and a description of the company or person making the application.

**B. Host landowners.** The application shall include the names and addresses of the landowners on whose property the proposed facilities would be built.

**C. Certification that Filing Requirements Have Been Met.** The applicant must certify that it has complied with the filing requirements listed above.

**D. Existing Permits.** The applicant must provide copies of any relevant local or state permits (including Act 250 and municipal zoning permits) that relate to the facility and identify conditions in the permits that could impact the proposed development. If the proposed project would be inconsistent with any existing permit conditions, the applicant shall identify those conditions and explain why it is not feasible to harmonize the proposed project with those conditions. The applicant shall certify that it has not obtained or been denied a permit or permit amendment under the provisions of Title 24 or chapter 151 of Title 10 for the same or substantially the same project. An applicant may seek approval under Section 248a for a modification to a previously permitted project.

## **E. Project Description**

### **1. Site Plans**

The applicant must provide a site plan for each telecommunications facility project. A site plan shall include:

- (a) Proposed telecommunications facility locations and a description of any antennas or any ancillary improvements, including the dimensions and aggregate surface areas of antenna faces.
- (b) Property boundaries and setback distances to the base(s) of the proposed support structure or existing structure and to the nearest corners of each of the related structures to those boundaries, and dimensions of all proposed improvements.
- (c) Proposed utilities, including distance from source of power, sizes of service available and required, and locations of any proposed utility or communication lines.
- (d) A description of any areas where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations of wetlands.

- (e) Detailed plans for any drainage of surface and/or sub-surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
- (f) Locations and specific descriptions of proposed screening, landscaping, ground cover, fencing, exterior lighting and signage.
- (g) Plans of any proposed access driveway, roadway or parking area at the facility site, including grading, drainage and traveled width, including a cross section of the access drive indicating the width, depth of gravel, and paving or surface materials.

## **2. Project Scope and Narrative**

The applicant shall provide a written certification that the proposed facilities constitute a de minimus modification to an existing facility.

## **F. Public Good**

The applicant must explain how the proposed project would promote the general good of the state consistent with 30 V.S.A. § 202c(b).

## **VI. Waiver of Notice Requirements**

An applicant seeking a waiver or modification of the notice requirements for an application shall file a request for such waiver or modification with the Board and the Department of Public Service not later than 30 days prior to the date the notice is required, together with a description of the project, the reason for seeking the waiver or modification, and a demonstration that good cause exists for granting a waiver or modification. Any granting of such a waiver or modification shall be based on a determination that the entities subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such entities would constitute a significant administrative burden without corresponding public benefit. The Board shall rule on a waiver or modification request within 21 days of the filing of the request.

## **VII. Completed Applications**

Upon receiving an application under Section 248a, Board staff will review the application for completeness. If the application does not substantially comply with the application requirements set forth herein, the Clerk of the Board will inform the applicant of the deficiencies. Upon submission of all information necessary to address the deficiencies, the Clerk of the Board shall notify the applicant that the filing is complete.



**VIII. Submission of Comments and Requests for Hearing**

If any person wishes to submit comments or motions to intervene to the Board concerning an application filed pursuant to Section 248a or request a hearing for projects other than de minimus modifications, such correspondence is due at the Board within 21 calendar days of the date that the application was submitted to the Board and all required recipients. In order to request a hearing, commenters must make a showing that the application raises a significant issue regarding one or more of the substantive criteria applicable to the proposed project.

For de minimus project applications, if a person receiving a copy of the application wishes to object to a project's classification as a de minimus modification, such correspondence is due at the Board within 21 calendar days of the date that the application was submitted to the Board and all required Parties. If no objections to the classification of the project are timely filed with the Board, a CPG shall be issued without further proceedings.

**IX. Issuance of Decision**

**A.** For de minimus modifications: If no objections to the classification of the project are timely filed with the Board, the Board shall issue a CPG without further proceedings.

**B.** For projects of limited size and scope: Unless the Board determines that an application raises a substantial issue, it shall issue a final determination on an application within 45 days of its filing or, if the original filing was not complete, within 45 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete. If the Board determines that an application raises a substantial issue, it shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing was not complete, within 90 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete.

**C.** For all other projects: Unless the Board determines that an application raises a significant issue, it shall issue a final determination on an application within 60 days of its filing or, if the original filing was not complete, within 60 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete. If the Board rules that an application raises a significant issue, it shall issue a final determination on the application within 180 days of its filing or, if the original filing was not complete, within 180 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 10<sup>th</sup> day of August, 2011.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 10, 2011

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*